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5 UNITED STATES DISTRICT COURT  
6 WESTERN DISTRICT OF WASHINGTON  
7 AT SEATTLE

8 BRADLEY KLOCK,

9 Plaintiff,

10 v.

11 CLEARLY LASIK, INC., a Nevada corporation;  
12 MICHAEL MOCKOVAK and HEATHER  
13 MOCKOVAK, and the marital community  
14 composed thereof; and JOSEPH KING and  
HOLLY KING, and the marital community  
composed thereof,

15 Defendants.

CASE NO. C09-123RSM

ORDER TO SHOW CAUSE RE:  
REMAND

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17 This matter is now before the Court for consideration of a Notice of Removal filed by defendants  
18 Clearly Lasik, Inc., Michael Mockovak, Joseph King, and Holly King. This action was filed in King  
19 County Superior Court on January 13, 2009, and defendants removed it to this Court on January 27,  
20 2009. The Court finds that the Notice of Removal is defective for the following reasons:

21 (1) This matter was filed in state court and alleges only state law causes of action. It was  
22 removed to this Court pursuant to 28 U.S.C. §§ 1332(a) and 1441(a), on the basis of the parties'  
23 diversity. Dkt. # 1. The Notice of Removal states that plaintiff is a resident of Vancouver, British  
24 Columbia; defendant Clearly Lasik, Inc., is a Nevada corporation with its principal place of business in  
25 Renton, Washington; and defendants Mockovak and King are all residents of Washington State. *Id.*, ¶¶  
26 3-7. The Notice of Removal states that on these facts, defendant Clearly Lasik is a citizen of Nevada and  
27 California. Notice of Removal, ¶ 4. However, pursuant to statute, a corporation is deemed a citizen of

28 ORDER TO SHOW CAUSE RE: REMAND - 1

1 “any State by which it has been incorporated and of the State where it has its principal place of business .  
2 . . .” 28 U.S.C. § 1332(c)(1). As the principal place of business is stated as Renton, Washington, Clearly  
3 Lasik, Inc., is a citizen of Washington State, not California.

4 (2) The Notice of Removal disregards the language of the removal statute applicable to diversity  
5 jurisdiction, which reads in relevant part,

6 Any civil action of which the district court has original jurisdiction founded on a claim or  
7 right arising under the Constitution, treaties or laws of the United States shall be removable  
8 without regard to the citizenship or residence of the parties. **Any other such action shall  
be removable only if none of the parties in interest properly joined and served as  
defendants is a citizen of the State in which such action is brought.**

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10 28 U.S.C. § 1441(b).

11 The burden of establishing federal jurisdiction is on the party seeking removal, and the removal  
12 statute is strictly construed against removal jurisdiction. *Prize Frize Inc., v. Matrix Inc.*, 167 F. 3d 1261,  
13 1265 (9th Cir. 1999). If at any time before judgment it appears that this Court lacks subject matter  
14 jurisdiction, “the case shall be remanded.” 28 U.S.C. § 1447(c). This Court has “a duty to establish  
15 subject matter jurisdiction over the removed action *sua sponte*, whether the parties raised the issue or  
16 not.” *United Investors Life Insurance Co. v. Waddell & Reed, Inc.*, 360 F.3d 960, 967 (9th Cir. 2004).  
17 However, the “forum defendant rule” set forth in 28 U.S.C. § 1441(b) has been determined to be a  
18 procedural rule rather than a jurisdictional one, such that the Court may not *sua sponte* order remand.  
19 *Lively v. Wild Oats Markets, Inc.*, 456 f. 3d 933, 938-41 (9th Cir. 2006).

20 Accordingly, the parties are ORDERED TO SHOW CAUSE, on or before February 20, 2009,  
21 why this action should not be remanded to King County Superior Court. In the event plaintiff fails to  
22 either respond to show cause or to move for remand, such failure shall be deemed by the Court as a  
23 waiver of the procedural defect in removal.

24 Dated this 29<sup>th</sup> day of January, 2009.

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26 RICARDO S. MARTINEZ  
27 UNITED STATES DISTRICT JUDGE